

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

CITY of SHORELINE, TOWN of  
WOODWAY, and SAVE RICHMOND  
BEACH, et al.,

Petitioners,

v.

SNOHOMISH COUNTY,

Respondent,

and

BSRE Point Wells, LLC,

Intervenor.

**Coordinated Case Nos.**

**09-3-0013c and 10-3-0011c**

**(Shoreline III and Shoreline IV)**

**ORDER ON MOTIONS TO  
SUPPLEMENT THE RECORD AND  
MOTION FOR SITE VISIT**

This Matter came before the Board on Petitioners' [Joint] Motion to Supplement the Record and Motion for Site Visit and Intervenor BSRE Point Wells, LP's Motion to Supplement the Record.<sup>1</sup> The parties responded in subsequent pleadings.<sup>2</sup>

<sup>1</sup> Both motions were filed Dec. 21, 2010, and proposed supplemental exhibits were attached.

<sup>2</sup> Snohomish County's Response to Petitioners' Motion to Supplement the Record and Motion for Site Visit, Jan. 3, 2011 Declaration of Bree Urban in Support of Snohomish County's Response to Petitioners' Motion to Supplement the Record and Motion for Site Visit, Jan 3, 2011 [re: date of WSDOT traffic count document]

Snohomish County's Response to Intervenor BSRE Point Wells, LP's Motion to Supplement the Record, Jan 3, 2011 Intervenor BSRE Point Wells, LP's Response to Motions (Jan 3, 2011), at 1-2 and 12-13

Petitioner City of Shoreline's Response to Snohomish County's Dispositive Motion for Partial Dismissal of Parties and Issues (Jan 3, 2011), at 1-2

Petitioner Save Richmond Beach Response to Intervenor BSRE Point Wells' Motion to Supplement the Record (Jan. 3, 2011)

Petitioners' Reply to Snohomish County's Response to Motion to Supplement Record & Site Visit, Jan 5, 2011

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Growth Management Hearings Board

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1 **MOTIONS TO SUPPLEMENT**

2 The Board's Rules of Practice and Procedure provide, at WAC 242-02-540:

3 Generally, the board will review only the record developed by the city, county, or  
4 state in taking the action that is the subject of review by the board. A party may  
5 by motion request that the board allow such additional evidence as would be  
6 necessary or of substantial assistance to the board in reaching its decision, and  
7 shall state its reasons. A board may order, at any time, that new or supplemental  
8 evidence be provided.

9 The Board's rules also provide that the Board may take official notice of "ordinances,  
10 resolutions and motions enacted by cities, counties, or other municipal subdivisions of the  
11 state of Washington."<sup>3</sup>  
12

13 **Supplemental Exhibits Proposed by Petitioners**

14 Petitioners City of Shoreline, Town of Woodway and Save Richmond Beach propose 12  
15 items for supplementation to the Index for *Shoreline III*.  
16

17 Aerial Maps and WSDOT Data. Proposed Exhibits #262-268 are aerial maps of Snohomish  
18 County's designated Urban Centers, and Proposed Exhibit #269 consists of portions of the  
19 2009 WSDOT Annual Traffic Report. Petitioners state that the maps were compiled by  
20 Shoreline Public Works Department in December 2010. They provide an aerial view of the  
21 built environment in and adjacent to each of Snohomish County's Urban Center zones.  
22 They are annotated to include the acreage of each Urban Center and the average daily trips  
23 for the principal arterials and highways serving each Urban Center. The trip data are derived  
24 from Proposed Exhibit #269. Petitioners assert that these Exhibits are necessary or will be  
25 of substantial assistance to the Board in reviewing Legal Issues 2, 5, 6, and 10.  
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28 Snohomish County objects that these maps were developed by the City of Shoreline for  
29 purposes of this proceeding and were not before the County Council in 2009 when they  
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<sup>3</sup> WAC 242-02-660(4).  
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1 enacted the ordinances challenged in *Shoreline III*.<sup>4</sup> BSRE objects that these materials are  
2 not relevant to matters before the Board.<sup>5</sup> The Petitioners reply that the nature and  
3 character of road systems and development in the areas of the Urban Centers was familiar  
4 to the County Council: "These exhibits simply bring the Board to the same level of  
5 awareness."<sup>6</sup> In particular, Petitioners point out that the road network shown on maps in the  
6 record is of little relevance without the data showing carrying capacity of the roadways.<sup>7</sup>  
7

8 The Board views the aerial maps as illustrative exhibits, depicting areas of the County that  
9 are familiar to County decision-makers, and annotated with information readily available  
10 from public sources. These exhibits were not a part of the paper file or content of meetings  
11 that informed the Council's adoption of the challenged ordinances. However, if relevant,  
12 they may assist the Board in understanding matters that were undoubtedly known to County  
13 officials.  
14

15  
16 The City of Shoreline asserts that the carrying capacity of roadways accessing the County's  
17 Urban Centers is necessary to a determination of whether urban services can be provided  
18 to serve the zoned densities.<sup>8</sup> Shoreline also responds to the County's objection that 2009  
19 traffic counts were not available prior to adoption of the *Shoreline III* ordinances. Shoreline  
20 will supplement the 2009 traffic counts with data from previous years, from Index #286,  
21 when used to support issues in *Shoreline III*.<sup>9</sup> The Board agrees that the information  
22 appears to be "necessary or of substantial assistance,"<sup>10</sup> and Proposed Exhibits #262 - 269  
23 are **admitted**.  
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25

26 Transportation Plans. Proposed Exhibits #270-273 are maps and information prepared by  
27 Sound Transit and King County Metro. Snohomish County and Intervenor BSRE have no  
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29  
30 <sup>4</sup> County Response to Petitioners' Motion to Supplement, at 9-12, and Declaration of Bree Urban.

31 <sup>5</sup> Intervenor's Response to Motions, at 12-13.

32 <sup>6</sup> Petitioners' Reply re: Supplementation, at 3.

<sup>7</sup> Id. at 2.

<sup>8</sup> Petitioners' Reply to Supplement, at 2.

<sup>9</sup> Petitioner's Reply to Supplement, at 3.

<sup>10</sup> The Board declines a site visit, *infra*.

1 objections to these materials. The County points out that Proposed Exhibit #270 was  
2 inadvertently omitted from its Index and should have appeared at Index #14. The County  
3 and BSRE note that Petitioners' Proposed Exhibits #271 and #273 are also offered in  
4 BSRE's Motion to Supplement.  
5

6 The Board finds that these documents provide information about transit services that could  
7 be of substantial assistance to the Board in its decision. Petitioners' motion to supplement  
8 the record with Proposed Exhibits #270 - 273 is **granted**.  
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10 The Board rules on these items as follows:  
11

Proposed Exhibit	Document	Board Ruling
262	Aerial Map Urban Center I-5 & 128 <sup>th</sup> SE	Admitted
263	Aerial Map Urban Center 152 <sup>nd</sup> & SR 99	Admitted
264	Aerial Map Urban Center Point Wells	Admitted
265	Aerial Map Urban Center SR 527 & 196 <sup>th</sup> SE	Admitted
266	Aerial Map Urban Center I-5 & 164 <sup>th</sup> SW	Admitted
267	Aerial Map Urban Center SR 99 & SR 525	Admitted
268	Aerial Map Urban Center I-5 & 44 <sup>th</sup> W	Admitted
269	Portion of 2009 WSDOT Annual Traffic Report	Admitted
270	Map – 2005 Sound Transit Long Range Plan	Admitted
271	Sound Transit North Corridor Transit Project	Admitted
272	Map – Sounder Commuter Rail Fact Sheet	Admitted
273	King County Metro Bus Routes and schedules	Admitted

#### 23 **Supplemental Exhibits Proposed by Intervenor BSRE**

24 BSRE proposes the addition of 17 documents. Snohomish County indicated no objections,  
25 but pointed out that several of the documents were already in the record. The City of  
26 Shoreline objected to Proposed Exhibit #315, because it is not an adopted City plan or  
27 ordinance. None of the other Petitioners filed objections.  
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29 The Board notes that it can take official notice of adopted plans and ordinances of cities and  
30 other municipal subdivisions of the State. Proposed Exhibit #315 is a set of design  
31 guidelines from the City of Shoreline for the Point Wells Urban Center. The City objects to  
32

1 their inclusion because they have not been presented to the City Council or formally  
2 adopted.<sup>11</sup> Intervenor BSRE urges that, although the guidelines are not yet adopted, they  
3 indicate the City's consideration of likely acceptable development on the Point Wells  
4 property.<sup>12</sup> The Board **does not admit** this document.

5  
6 The Board also does not at this time admit Proposed Exhibit #316, Town of Woodway's  
7 Design Standards for Point Wells, as there is no indication on the document whether it has  
8 been adopted by the Town.<sup>13</sup>

9  
10 The Board rules on these proposed exhibits as follows:

Proposed Exhibit	Document	Board Ruling
300	Sound Transit 2005 Long-Range Plan and Map	<b>Board takes official notice</b>
301	Cover sheet and maps from 2005 SEIS for Sound Transit's Long Range Plan	<b>Board takes official notice</b>
302	Summary of Sound Transit's North Corridor Transit Project	Admitted supra as Petitioners' Exhibit #271
303	Route maps and schedules for Metro Routes 304 and 348	Admitted supra as Petitioners' Exhibit # 273
304	Point Wells' development timeline, as shown at the July 27 and September 23, 2010 community meetings in Edmonds and Shoreline	<b>Admitted</b>
305	January 9, 2009 comments by BSRE's predecessor regarding Point Wells' December, 2008 SEIS. Inadvertently omitted from County Index	<b>Admitted</b>
306	February 27, 2009 letter from Gary Huff to the Snohomish County Planning Commission regarding Point Wells' docketing request	Already in record as <i>Shoreline III</i> Index #121
307	April 21, 2009 letter from Doug Luetjen to Deputy Chief Scott Pearson of	The County indicates this letter generated the

11 Shoreline Response to County's Motion, at 1-2.

12 Intervenor's Reply to Motions, at 2-3.

13 The City Attorney for Woodway has filed a notice of unavailability during the time scheduled for briefing on motions in this case.

	Snohomish County Fire District No. 1	document proposed as Exhibit 310. <b>Admitted</b>
308	May 14, 2009 letter from Doug Luetjen to Deputy Chief Rob Beidler of the Snohomish County Sheriff's Office	The County indicates this letter generated the document proposed as Exhibit 310. <b>Admitted</b>
309	May 15, 2009 letter from Shoreline City Manager Robert Olander to Steve Farkas, Vice President and General Counsel of Paramount Petroleum	Already in record as <i>Shoreline III</i> Index # 165
310	May 21, 2009 email with attachments from Gary Huff to Steve Skorney (PDS)	Already in record as <i>Shoreline III</i> Index # 167
311	May 20, 2009 letter from Marcus Kragness, Shoreline Fire Department Chief, to Steve Farkas, Vice President and General Counsel of Paramount Petroleum	<b>Admitted</b>
312	September 24, 2009 letter from Gary Huff to the Snohomish County Council	Already in record as <i>Shoreline III</i> Index # 166
313	November 30, 2009 letter from Olympic View Water & Sewer District the District's ability to provide water service to the site	<b>Admitted</b>
314	City of Shoreline Point Wells Subarea Plan (Exhibit A to Ordinance No. 571) adopted April 19, 2010	Already in record as Core Document, Index # 319, Shoreline Comprehensive Plan
315	City of Shoreline's proposed pre-annexation zoning for Point Wells (Chapter 20.92, Planned Area 1 Zone). The City of Shoreline indicates this proposal has not been presented to or adopted by the City Council	<b>Denied</b>
316	Town of Woodway's Design Standards for Point Wells	This document <b><i>may be subsequently offered</i></b> , and the Board will take official notice if accompanied by indicia that it has been formally adopted by the Town of Woodway
317	BSRE Point Wells/Perkins+Will power	<b>Admitted</b>

	point presentation at September 23, 2010 community meeting attended by representatives of each of the Petitioners.	
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### **Distinguishing the Record for *Shoreline III* and *Shoreline IV***

The County urges the Board to carefully distinguish the documents that constitute the record for *Shoreline III* from those for *Shoreline IV*.<sup>14</sup> Intervenor BSRE expressly requests the Board to allow the documents to be used interchangeably.<sup>15</sup>

In general, the Board accepts documents dated prior to the adoption of Ordinances 09-038 and 09-051 as within the record for *Shoreline III*. All the *Shoreline III* documents and any subsequent documents dated prior to the adoption of Ordinances 09-079 and 09-080 are presumed to be within the record for *Shoreline IV*. Illustrative exhibits, such as Petitioners' Proposed Exhibits #262- 268, may be used interchangeably in both cases, subject to specific objection.

### **MOTION FOR SITE VISIT**

At the Prehearing Conference, Petitioners orally requested that the Board schedule a site visit to Point Wells and to the other designated Urban Centers in Snohomish County. Petitioners renew that request by motion, stating that a visit to the Point Wells site, arranged outside the presence of the parties or their counsel, would be of substantial assistance to the Board in considering Legal Issues 8 and 10.<sup>16</sup>

The County objects to the site visit, arguing that viewing the site would inappropriately supplement the record that was before the County Council.<sup>17</sup> Intervenor BSRE has no objection to the site visit but notes that access to Point Wells is restricted by federal

<sup>14</sup> County Response to BSRE Supplement, at 2.

<sup>15</sup> Intervenor's Motion to Supplement, at 3-4.

<sup>16</sup> Petitioners' Motion to Supplement, at 3

<sup>17</sup> County Response to Petitioners' Supplement, at 6-9.

1 regulations and requires an escort for the entire site visit by Paramount Petroleum  
2 personnel.<sup>18</sup>

3  
4 The Board declines to conduct a site visit in this case and the motion is **denied**. The Board  
5 members here are familiar with Puget Sound shorelines and bluffs and with development  
6 patterns on the uplands. The paper record and supplemental documents – aerial  
7 photographs, topographical maps - appear to provide the additional area-specific  
8 information necessary to the Board's decision of the issues in the case. Because the Board  
9 does not find a site visit to be necessary or of substantial assistance to its resolution of this  
10 case, the Board does not address the parties' legal arguments on this point.  
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12 So ORDERED this 14th day of January, 2011.  
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16 Margaret A. Pageler, Presiding Officer  
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<sup>18</sup> Intervenor's Response to Motions, at 13.  
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